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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/597,318	06/19/2000	Frank Venegas JR.	IDS-10505/14	4057

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EXAMINER

YIP, WINNIE S

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 03/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/597,318

Applicant(s)

VENEGAS, FRANK

Examiner

Winnie Yip

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Part II DETAILED ACTION

This office action is in response to applicant's amendment filed on July 23, 2000.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Objections

1. Claims 1-2 are objected to because of the following informalities:

Regard to claim 1, line 11, the term “**the outer shell**” appears to read “**the outer wall**” as previously defined. Appropriate correction is required.

Regard to claim 2, line 5, the recited language “one of the ends **opening into the other end** terminating into a closed hemispherically shaped dome top” is deemed improper with grammatical and idiomatic errors. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. Claims 4 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 4 and 6, the scope of the claimed invention is confusing because there is insufficient structural limitation providing what is the “cover” in the assembly as claimed. Appropriate correction is required.

Claim Rejections - 35 U.S.C. 102

3. Claims 1-4 and 6 stand rejected under 35 U.S.C. 102(b) as being anticipated by Deike (US patent No. 4,021,977).

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Deike shows and teaches a stanchion and cover assembly comprising a substantially rigid elongated stanchion (12) having a lower end being secured to a fixed anchor (11) which is fixed into the ground and a upper terminal end extending over the ground, a sleeve (13) made of plastic and having an elongated, generally cylindrical body extending between two opposing ends, the sleeve having a generally cylindrical interior cavity and having substantially the same wall thickness, the opposing ends including an opened lower end to receive the elongated stanchion (12), and a closed second end with a closed hemispherical shaped cap (13a), a reflector tape (15) being wrapped around the upper end portion of the sleeve, the sleeve (13) having a length slightly longer than the height of the upper portion of the stanchion (12), and the interior cavity having a cross-sectional shape being capable to be slip fitted in an engagement with the upper portion of the elongated stanchion (13) without other support elements such as a clamp.

4. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Voegeli (US patent No. 3,812,279).

Voegeli shows and discloses a cover (12) capably used for a substantially rigid elongated cylindrical stanchion (21) having a lower end associated with the ground, the cover consisting essentially of: an elongated, generally cylindrical sleeve (12) being made of a plastic, the cylindrical sleeve (12) having an outer wall extending between two opposing ends, the opposing ends including a closed first upper end having a closed hemispherical shaped dome top that smoothly transitions from the outer wall of the sleeve, and an opened second lower end (25) capably for receiving a vertical stanchion in a slip-fit engagement, the cylindrical sleeve (12)

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having a generally cylindrical interior cavity extending through the opened second lower end and having a substantially consistent circular cross-section without any inwardly extending protrusion, the sleeve (12) having a thickness of the outer wall and the thickness of the dome top being substantially the same, and the sleeve having a length which is capable to be slightly longer than a high of the upper portion of a stanchion (notice the stanchion is not positively claimed).

Claim Rejections - 35 U.S.C. 103

5. Claims 1-4 and 6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Beatty '756 in view of Arth, Jr. '883.

Beatty shows and discloses a stanchion and cover assembly comprising a substantially rigid elongated stanchion (12) having a first end being secured the ground and a second end extending over the ground, the rigid elongated stanchion (12) may have a generally cylindrical shaped (see Fig. 3), a sleeve (18) having a generally cylindrical elongated body having an opened end and a opposing closed end, and a generally cylindrical interior cavity extending between the two opposing ends, and the sleeve and the closed end of the sleeve being molded from a plastic material and having substantially the same wall thickness, wherein the interior cavity of the sleeve (18) has a cross-sectional shape being elastically slip fitted in an engagement with the upper portion of the stanchion (see col. 2, line 19), said the sleeve forming a cover being retained over on the stanchion without any additional structural element.

Although Beatty does not define the closed end of the sleeve having a generally hemispherical shaped dome top as claimed, Beatty teaches the closed end of the sleeve may be formed in variety of shapes corresponding to the shape of the stanchion to be received therein (see Figs. 1

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and 3). Further, Arth, Jr. teaches a protective cover (18) for covering an elongated stanchion (16), the cover having, as well known in the art, a closed, hemispherical shaped dome top (20) with a same shaped internal surface for increasing durability of the cover with a smooth outer surface (see col. 3, lines 43-45 and 49-51) for covering an elongated stanchion (16). Therefore, it would have been an obvious matter of design choice to a person of ordinary skill in the art, at the time the invention was made, to modify the cover of Beatty to obtain an enclosed hemispherical top end as taught by Arth, Jr. as specified in claims 1-6 because Applicant has not disclosed that a cover having an closed top end being formed with a hemispherical shaped dome top end provides an advantage, is used for a particular purpose, or solves a stated problem. Applicant further disclosed that the enclosed top end of the cover would be formed with various shapes such as show in Figs. 10A to 10B. One of ordinary skill in the art, furthermore, would have expected applicant's invention to perform equally well with the either an enclosed flatten top end of Beatty or hemispherical shaped dome top as taught by Arth, Jr. because both shaped top ends perform the same function of providing a smooth protective cover with durable top end to accommodate the shape of the stanchion for protecting a penetration of the stanchion through the sleeve with desirable aesthetic appearance.

6. Claims 1-4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almond (US patent No. 4,972,864) in view of Arth, Jr. '883.

Almond shows and teaches a cover (25) and a stanchion (22) assembly comprising a substantially rigid elongated cylindrical stanchion (22) which has a lower portion associated with the ground and an opposing upper portion, a cover consisting essentially of: an elongated,

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generally cylindrical sleeve (25) being molded of a plastic, said sleeve (25) having an outer wall extending between two opposing ends (28, 26), said sleeve (25) having a generally cylindrical interior cavity extending along the sleeve and through one of the two opposing ends, the interior cavity having a substantially consistent circular cross-sectional shape extending between the two opposing ends without any inwardly extending protrusion, the opposing ends including a closed top end (28) transverse to the body and an opened lower end (26) for receiving the vertical stanchion (12) in a slip-fit engagement, the sleeve (25) having a wall of thickness and the thickness of the closed top end being substantially the same, and the sleeve having a length capably slightly longer than a high of the upper portion of a stanchion (12). Although Almond does not define the closed end of the sleeve (25) and an top end of the stanchion (22) having a generally hemispherical shaped dome top as claimed, Almond discloses the closed end (28) of the sleeve (25) may be formed in variety of shapes corresponding to the shape of the stanchion to be received therein (see Figs. 3, 9, 10). Further, Arth, Jr. teaches a protective cover (18) for covering an elongated stanchion (16), the cover having, as well known in the art, a closed, hemispherical shaped dome top (20) with a same shaped internal surface for increasing durability of the cover with a smooth outer surface (see col. 3, lines 43-45 and 49-51) for covering an elongated stanchion (16). Therefore, it would have been an obvious matter of design choice to a person of ordinary skill in the art, at the time the invention was made, to modify the cover of Almond to obtain an enclosed hemispherical top end as taught by Arth, Jr. as specified in claims 1-6 because Applicant has not disclosed that a cover having an closed top end being formed to be a hemispherical shaped dome top end provides an advantage or is used for a particular purpose, or solves a stated problem. Applicant further disclosed that the

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enclosed top end of the cover would be formed with various shapes such as show in Figs. 10A to 10B. Therefore, one of ordinary skill in the art would have expected applicant's invention to perform equally well with the either an enclosed flatten top end of Almond or hemispherical shaped dome top as claimed as taught by Arth, Jr. because both shaped top ends perform an equal well function of providing a smooth protective cover with durable top end to accommodate the shape of the stanchion for protecting a penetration of the stanchion through the sleeve with desirable aesthetic appearance.

Response to Argument

7. Applicant's arguments filed November 28, 2003 have been fully considered but they are not persuasive since applicant does not discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them. Therefore, the examiner's response to applicant's argument of the last office action is sustained. See the examiner's response set forth last office letter mailed May 22, 2003.

Therefore, the rejections are still granted.

ACTION IS FINAL

8. Applicant's amendment necessitated the new grounds of rejection. Accordingly, THIS ACTION IS MADE FINAL. See M.P.E.P. ' 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. ' 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN

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THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. '1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 703-308-2491. The examiner can normally be reached on M-F (9:30-6:30), Second Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Winnie Yip
Primary Examiner
Art Unit 3637

wsy
March 2, 2004